

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
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Rural Call Completion )  
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WC Docket No. 13-39

REPLY COMMENTS OF  
ANPI, LLC AND ANPI BUSINESS, LLC  
ON FURTHER NOTICE OF PROPOSED RULEMAKING

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## SUMMARY

The initial comments of ANPI and numerous other parties reflect solid support for a supplemental intermediate provider certification program on which the Further Notice of Proposed Rulemaking ("FNPRM") seeks comment. This support comes from diverse groups, including long distance carriers, rural local exchange carriers, and state regulatory commissions. Opposition to such a program comes from only a handful of parties and is weak at best. The opposition ignores the powerful deterrent effect of certification regulation, fundamental obligations of telecommunications providers, evidence implicating intermediate providers in rural call completion problems, the urgency of these problems, and the fact that carriers have willingly obtained analogous certifications from resellers for years. The rules thus far adopted by the Commission to address rural call completion problems do not apply to intermediate providers, and certification regulation of such providers will effectively deter unlawful intermediate provider bypass schemes that result in rural call completion problems. The Commission should therefore adopt intermediate provider certification rules to promote the public interest in safe and adequate telecommunications service to rural area consumers.

No other changes to the rules already adopted by the Commission are warranted at this time. The initial comments of interested parties on the FNPRM do not justify mandatory separate reporting of auto-dialer traffic; or any new "safe harbors" or modifications to the adopted "safe harbors"; or mandatory terminating call answer rate reporting by rural local exchange carriers.

As recently articulated by Chairman Wheeler, the Commission has an obligation to act here and now to protect the Network Compact and to promote the public interest imperative.

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**INTRODUCTION**

ANPI, LLC. and ANPI Business, LLC (hereafter “ANPI” or “Company”) respectfully submit their reply to certain initial comments on the Further Notice of Proposed Rulemaking (“FNPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) on November 8, 2013 in this proceeding.<sup>1</sup> ANPI submitted initial comments<sup>2</sup> supporting, in particular, the Commission’s proposal in the FNPRM to develop a record necessary to decide “whether we should impose certifications or other obligations on intermediate providers”.<sup>3</sup> As the Commission noted in the FNPRM, ANPI previously proposed “intra-industry compliance certification as a supplement to the data collection, retention and reporting adopted [for covered

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<sup>1</sup> *In the Matter of Rural Call Completion*, WC Docket 13-39, Report and Order and Further Notice of Proposed Rulemaking, released November 8, 2013 (FCC 13-135), 78 Fed. Reg. 76257 (FNPRM); 78 Fed. Reg. 76218 (Report and Order and Rules) (December 17, 2103). (“Order and FNPRM”). Citations herein are to paragraph numbers in the combined Order and FNPRM issued by the Commission on November 8, 2013 (FCC 13-135).

<sup>2</sup> Initial Comments of Associated Network Partners, Inc. and Zone Telecom, Inc. on Further Notice of Proposed Rulemaking, WC Docket No. 13-39 (January 16, 2014) (“ANPI FNPRM Comments”). These Reply Comments reflect the effectiveness of a corporate restructuring of the entities that submitted initial comments.

<sup>3</sup> Order and FNPRM, ¶ 123.

providers] in the Order.”<sup>4</sup> In its initial comments on the FNPRM, ANPI further developed the public interest rationale that supports its intermediate provider certification proposal.<sup>5</sup>

The public interest rationale is simply stated. As the Commission acknowledged in the FNPRM, the use of intermediate providers by originating carriers seeking the lowest cost routing arrangements to terminate calls is a primary cause of rural call completion problems. Yet none of the rules already adopted by the Commission in this proceeding apply to intermediate providers that have strong economic incentives to engage in unlawful bypass schemes in order to offer low cost terminating services regardless of the quality of those services. The intermediate provider certification program described in the FNPRM would effectively close this gap in the Commission’s data recording, retention and reporting rules that apply only to “covered” originating providers.

ANPI provides carrier services to hundreds of telecommunications providers throughout the United States, including Tier 1, Tier 2 and Tier 3 carriers. The Company is the largest provider of long-distance telecommunications services to domestic independent telephone companies. ANPI has been in continuous operation since 1996. The Company’s members and owners include hundreds of independent telephone companies providing local exchange service in rural areas throughout the country. ANPI and its members annually carry billions of minutes of telecommunications. Thus, ANPI has considerable experience with rural telephone service.

ANPI proposed the intra-industry intermediate provider certification program on which the Commission seeks comment in the FNPRM based on ANPI’s experience with the call completion problems of rural local exchange carriers that ANPI serves. There is considerable

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<sup>4</sup> Id., citing ANPI’s May 13, 2013 Comments at 9, and ANPI’s June 11, 2013 Reply Comments at 12 in this docket (hereafter “ANPI Comments” and “ANPI Reply Comments” respectively).

<sup>5</sup> ANPI FNPRM Comments at 2-9.

support in the initial comments of parties in addition to ANPI for the intra-industry intermediate provider certification program described in the FNPRM. Moreover, none of the initial comments on the FNPRM of other parties presents a serious challenge to the efficacy or to the public interest imperative of such a program. Accordingly, the Commission should adopt such a program. The initial comments on the FNPRM do not justify any further changes at this time to the rules already adopted by the Commission in this proceeding.

### **DISCUSSION**

A. The Commission Can and Should Adopt an Intra-Industry Certification Rule that Covers Intermediate Providers

There is substantial evidence in the record of the initial comments on the FNPRM to support adoption of the intra-industry intermediate provider certification program initially proposed by ANPI in this proceeding. In addition to ANPI, Windstream Corporation squarely supports the proposal. In its initial comments Windstream unequivocally states: "Requiring intermediate providers to certify to the Commission that they are acting within the bounds of the law will create a necessary level of accountability among all participants."<sup>6</sup> Representatives of rural and some competitive LECs in Idaho, Oregon and the state of Washington (the Northwest Associations) also firmly support the proposal. "The Northwest Associations recommend that the certification compliance requirement discussed in the Call Completion Order should apply to intermediate providers. Any step to bring intermediate providers into compliance and to be responsible is a step forward."<sup>7</sup>

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<sup>6</sup> Comments of Windstream Corporation at 2-3.

<sup>7</sup> Comments of the Idaho Telecom Alliance, Oregon Telecommunications Association and Washington Independent Telecommunications Association at 4.

The Public Service Commission of the State of Missouri, in whose comments several other parties concurred, also supports the intermediate provider certification program described in the FNPRM. In its comments filed on January 3, 2014, the Missouri Commission states: “Intermediate providers . . . should be required to certify the company’s intent to comply with all applicable requirements for transmitting traffic, including state and federal rules, intercarrier compensation orders, tariffs and agreements. Regulatory authorities should be able to revoke a provider’s authorization if the provider fails to comply with the requirement.”<sup>8</sup> The Nebraska Public Service Commission,<sup>9</sup> the Minnesota Department of Commerce,<sup>10</sup> and numerous rural local exchange carriers have concurred in the comments of the Missouri Commission with respect to intermediate providers.<sup>11</sup>

Other parties favor an intermediate provider certification requirement, but it is unclear whether they support the strong proposal described in the FNPRM, or a needlessly watered down version of that proposal that would undermine its effectiveness. Consistent with the proposal described in the FNPRM, NARUC supports a certification by intermediate providers that they will “follow industry standards and State/FCC rules.”<sup>12</sup> However, NARUC appears to recommend only a registration requirement for intermediate providers.<sup>13</sup> The Rural Associations “support imposition of reasonable registration and certification requirements on intermediate providers.”<sup>14</sup> Although the Rural Associations describe a “minimum” certification that falls short of what is proposed in the FNPRM, they would require each intermediate provider to certify

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<sup>8</sup> Comments of the Public Service Commission of the State of Missouri at 3. ANPI interprets these comments to mean that the FCC has authority to revoke domestic Section 214 authorizations automatically granted under current FCC rules.

<sup>9</sup> Comments of the Nebraska Public Service Commission at 1.

<sup>10</sup> Comments of the Minnesota Department of Commerce at 1.

<sup>11</sup> See, e.g., Joint Comments of : Bay Springs Telephone Company, Inc. et.al. at 8.

<sup>12</sup> Comments of the National Association of Regulatory Utility Commissioners at 4. (“Comments of NARUC”).

<sup>13</sup> Id. at 7.

<sup>14</sup> Comments of the National Exchange Carrier Association, NTCA – The Rural Broadband Association, Eastern Rural Telecom Association and WTA – Advocates for Rural Broadband at 3. (“the Rural Associations”).

“that the provider routes calls either to other certified intermediate providers or directly to terminating LECs.”<sup>15</sup> If the Rural Associations are not wedded to the “minimum” certification they describe, their initial comments could be interpreted as entirely supportive of the certification program described in the FNPRM.

A handful of parties weakly oppose certification of intermediate providers under the program described in the FNPRM. For example, the Oregon Commission implicitly argues that certification is unnecessary because the originating provider can allegedly control the conduct of all intermediate providers through “service contracts” and such contracts are sufficient “to minimize the number of incomplete calls.”<sup>16</sup> The Oregon Commission asks the FCC to describe what corrective action would be taken for failure to comply with the certification program and whether it “is in addition to any breach of contract remedy inherent in tariffs and contracts for use by the affected non-breaching party.”<sup>17</sup> Reliance on discretionary contractual remedies alone to uphold the public interest in rural call completion service quality ignores the powerful deterrent effect of FCC regulation on misbehavior by intermediate providers. As ANPI argued in its initial comments: “the Commission should not leave enforcement . . . to private contractual remedies. An individual service provider may or may not be motivated to expend the resources necessary to enforce whatever remedies are available under a specific contract. The Commission should retain authority to enforce the certification requirement through its own remedies, including, if warranted, revocation of Section 214 authorizations to provide domestic interstate and international service.”<sup>18</sup>

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<sup>15</sup> Id. at 7.

<sup>16</sup> Comments of the Public Utility Commission of Oregon at 2.

<sup>17</sup> Id. at 3.

<sup>18</sup> ANPI FNPRM Comments at 5-6.



Level 3 also offers weak opposition. Level 3 argues that “a certification requirement creates a potential trap for the unwary who would then be subject to penalties, not solely for a failure to follow a substantive requirement, but simply for failure to obtain the required certification.”<sup>19</sup> This is analogous to maintaining that the legal requirement to file an income tax return with the Internal Revenue Service is a potential trap for the unwary who would be subject to penalties for failing to file an income tax return. Providers of telecommunications, no less than entities and individuals obligated to file income tax returns, are expected to know the applicable rules and regulations of jurisdictional federal agencies.

CenturyLink’s opposition is based on rank speculation. CenturyLink claims that no intermediate provider certification requirement is necessary because “some originating carriers may increase their oversight of intermediate providers” as a result of the rules the Commission has already adopted.<sup>20</sup> CenturyLink fails to recognize that intermediate providers have been identified as a primary source of rural call completion problems and none of the rules the Commission has adopted applies to intermediate providers. Its speculative contention that “some” originating providers “may” watch intermediate providers more carefully hardly qualifies as a reasonable basis to forego an intermediate provider certification program that would clearly serve the public interest in rural call completion service quality.

ITTA offers no cogent basis for its implicit opposition to an intermediate provider certification program. ITTA’s entire argument is as follows: “ While the imposition of rules on intermediate providers may be warranted, ITTA believes that the most prudent course of action may be to allow the requirements adopted in the *Report and Order* to operate for a reasonable

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<sup>19</sup> Comments of Level 3 at 5.

<sup>20</sup> Comments of CenturyLink at 2.

time period before concluding whether additional regulatory intervention is necessary.”<sup>21</sup> ITTA simply ignores the fact that intermediate providers are a primary cause of rural call completion problems and that the rules thus far adopted do not apply to intermediate providers. The record shows that rural call completion problems are urgent and that effective certification regulation of intermediate providers to minimize these problems is warranted. Accordingly, it would be imprudent for the Commission to delay effective certification regulation of intermediate providers.

The intermediate provider certification program outlined in the FNPRM, and supported by ANPI as well as other parties, would not treat intermediate providers as covered providers subject to data collection, retention and reporting requirements. Verizon opposes “any new retention, reporting, registration, certification, or other requirements placed on intermediate providers” because “they would increase the already high burdens of designing data retention and reporting systems and processes” imposed on covered providers.<sup>22</sup> Verizon’s argument is based on its asserted status as both a covered provider and an intermediate provider. However, Verizon fails to recognize that the program outlined in the FNPRM would only require certifications analogous to those Verizon itself has obtained for years without objection from resellers for USF reporting purposes.<sup>23</sup> No new “systems” need to be designed to comply with an intermediate provider certification program.

Although several parties filed no initial comments on the FNPRM’s intermediate provider certification proposal, the record shows strong support and only weak opposition among those parties who submitted initial comments on this proposal. The record as a whole clearly supports adoption of an intermediate provider certification program along the lines set forth in

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<sup>21</sup> Comments of the Independent Telephone & Telecommunications Alliance at 3. (“ITTA”).

<sup>22</sup> Comments of Verizon and Verizon Wireless at 7.

<sup>23</sup> See ANPI FNPRM Comments at 8-9 and ANPI Reply Comments at 15.

the FNPRM. Accordingly, the Commission should adopt such a program as an integral part of its regulatory policy to address the rural call completion problems the Commission has identified.

B. No Other Changes to the Rural Call Completion Rules Are Warranted At This Time

1. The Commission Should Not Require All Covered Providers to Segregate Auto-Dialer Traffic from Other Traffic for Reporting Purposes at this Time.

In its initial comments on the FNPRM, ANPI argued that the Commission should not require separate reporting by covered providers of auto-dialer traffic because the record shows that all covered providers are not capable of reliably distinguishing auto-dialer traffic from other traffic.<sup>24</sup> The initial comments of other parties on the FNPRM validate ANPI's position. Sprint, for example, states that it cannot separately identify any auto-dialer traffic because it does not send such traffic over dedicated facilities.<sup>25</sup> Level 3 states that "while it is possible to readily identify *some* auto-dialer traffic, not *all* auto-dialer traffic can be so readily identified".<sup>26</sup> Accordingly, the Commission should not require separate reporting by covered providers of auto-dialer traffic.

2. The Commission Should Not Add to or Modify the "Safe Harbors" it has Adopted.

In its initial comments, ANPI maintained that the Commission should gain experience with the efficacy of the "safe harbors" it has already adopted before considering modifications to them or additional "safe harbors".<sup>27</sup> ANPI further argued that the Commission should not delay the effectiveness of the rules it has already adopted to consider modifications of or additions to

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<sup>24</sup> ANPI FNPRM Comments at 9.

<sup>25</sup> Comments of Sprint Corporation at 3-4.

<sup>26</sup> Comments of Level 3 at 7 (emphasis in the original); *see also* Comments of Windstream Corporation at 1-2; Comments of National Cable & Telecommunications Association at 2; Comments of Comcast Corporation at 7; Comments of CenturyLink at 1.

<sup>27</sup> ANPI FNPRM Comments at 9.

“safe harbors”.<sup>28</sup> Further delay is now threatened by a number of proposals for additional or modified “safe harbors” in the initial comments of other parties on the FNPRM, as well as petitions for reconsideration of the already adopted rules.<sup>29</sup> The Commission should not allow the proposals or the petitions to delay the effectiveness of the rules it has adopted.

Although none of the petitions for reconsideration claims that the rules adopted by the Commission are anticompetitive, Hypercube asserts in its initial comments on the FNPRM that the “safe harbors”, based as they are on the number of intermediate providers used by a covered provider, are anticompetitive because they limit the number of intermediate providers a covered carrier would otherwise be willing to use.<sup>30</sup> Hypercube’s argument, however, is entirely theoretical as the rules are not yet effective and do not prohibit a covered provider from using as many intermediate providers as it wishes, so long as it then complies with the data recording, retention and reporting rules. Moreover, the alternative “safe harbor” proposed by Hypercube as a cure is entirely hypothetical inasmuch as it depends on the use of an industry-wide, yet to be implemented and “voluntary” Alert Service without any evidence of industry-wide willingness to adopt such a system.<sup>31</sup> The “good hop” versus “bad hop” evidence submitted by Hypercube<sup>32</sup> supports an FCC-mandated certification program for intermediate providers, not an hypothetical additional “safe harbor” that depends on “cooperation” among scores of providers in a highly competitive telecommunications industry.

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<sup>28</sup> Id.

<sup>29</sup> See Petition for Reconsideration of COMPTTEL (January 16, 2014); Transcom Enhanced Services Inc. Motion for Reconsideration (January 14, 2014); Carolina West Wireless, Inc. Petition for Reconsideration (January 16, 2014); Petition for Reconsideration of Sprint Corporation (January 16, 2014); Petition of USTELCOM and ITTA for Reconsideration (January 16, 2014).

<sup>30</sup> Comments of Hypercube Telecom, LLC on Further Notice of Proposed Rulemaking at 17-20.

<sup>31</sup> Id. at 20-24.

<sup>32</sup> Id. at 4-16.

Several other parties propose unwarranted modifications to existing “safe harbors” or new “safe harbors”. For example, Verizon would modify the “two-hop safe harbor” to exclude overflow traffic so it could more readily take advantage of the “safe harbor”.<sup>33</sup> Level 3 advocates a modification based on no use of intermediate providers “on an OCN-by-OCN basis”.<sup>34</sup> General Communications advocates a “safe harbor” for a covered provider, like itself, that “use[s] MF signaling to communicate with rural ILECs”.<sup>35</sup> The Commission should reject *sui generis* “safe harbor” proposals. To the extent any covered provider can show good cause for what it proposes, it should seek a limited waiver from the data recording, retention and reporting requirements the Commission has adopted. The Commission has already expressly invited parties to submit petitions for a waiver of the rules.<sup>36</sup>

CenturyLink proposes a “safe harbor” from data recording, retention and reporting rules for any covered provider who certifies “that it is complying with” the ATIS Call Completion/Call Termination Handbook, independent of its use of intermediate providers.<sup>37</sup> CenturyLink’s proposal fails to recognize that intermediate providers are a primary cause of rural call completion problems. CenturyLink also proposes a “safe harbor” for any covered provider that “demonstrates in two consecutive reporting periods that its performance in completing calls to rural OCNs is within the error margin of its performance in completing calls to rural OCNs in the aggregate”.<sup>38</sup> The error margin suggested by CenturyLink is “5 percent”.<sup>39</sup> Both the time

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<sup>33</sup> Comments of Verizon and Verizon Wireless at 2-5.

<sup>34</sup> Comments of Level 3 at 6-7.

<sup>35</sup> Comments of General Communications, Inc. at 5.

<sup>36</sup> Order and FNPRM, ¶¶ 96, 97.

<sup>37</sup> Comments of Century Link at 3.

<sup>38</sup> *Id.* at 5.

<sup>39</sup> *Id.*

period and the “margin of error” suggested by CenturyLink are arbitrary and unsupported by any hard evidence. Accordingly, its proposed “safe harbor” should be rejected.<sup>40</sup>

3. The Commission Should Not at this Time Impose Additional Requirements on Rural ILECs.

Several parties contend in their initial comments on the FNPRM that rural ILECs should be required to report their terminating call answer rate data to the Commission and be subject to other obligations.<sup>41</sup> In its initial comments on the FNPRM, ANPI observed that rural ILECs who are capable of collecting and reporting such data to the Commission, and who are experiencing call completion problems, have a natural incentive to report such data to the Commission regardless of their size. Rural ILECs who are incapable of collecting and reporting such data to the Commission, or who are not experiencing call completion problems, should not be required to report such data to the Commission regardless of their size.<sup>42</sup> Other parties concur.<sup>43</sup> Those parties who would impose such obligations on rural ILECs simply ignore these fundamental rural ILEC incentives and constraints. The Commission should therefore reject their proposals to impose additional obligations on rural ILECs.

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<sup>40</sup> Sprint suggests a different “safe harbor” based on “best practices”. Sprint would exempt a covered carrier that “routes all of its toll traffic to a rural OCN over its Feature Group D network for the relevant reporting period”. Comments of Sprint Corporation at 4. Sprint may of course seek a waiver of the data recording, retention and reporting rules on such a basis, and all such traffic, with proper verification, could be exempted from an intermediate provider certification requirement. *See* ANPI FNPRM Comments at 5.

<sup>41</sup> *See* Comments of National Cable & Telecommunications Association at 4; Comments of Level 3 at 5-6; Comments of Sprint Corporation at 1-2; Comments of Comcast Corporation at 2-5.

<sup>42</sup> ANPI FNPRM Comments at 10.

<sup>43</sup> *See* Comments of the Public Utility Commission of Oregon at 3-4; Comments of the Idaho Telecom Alliance, et. al. at 5-7; Comments of Bay Springs Telephone Company, Inc., et. al. at 9; Comments of NARUC at 7-8; Comments of the Rural Associations at 10-11.

## CONCLUSION

In a speech delivered little more than a week ago,<sup>44</sup> Chairman Wheeler stated:

We have an obligation to act now with the principles that have been transmitted to us in the form of statutes, judicial and regulatory precedents, scholarship and experience. A central reason we must act now is that while the world is changing, certain values remain as critical as ever. The Network Compact -- universal accessibility, interconnection, public safety and consumer protection -- constitute the things we have to promote and protect if we are to be faithful to the public interest imperative.<sup>45</sup>

In this proceeding, the Commission's regulatory intervention is needed to protect the "Network Compact" with respect to rural area service and to promote "the public interest imperative". The record shows that an intermediate provider certification program will fill a critical gap in the regulatory scheme the Commission has adopted to address rural call completion problems.<sup>46</sup> Accordingly, the Commission should adopt such a program and vigorously enforce the rules it has already adopted.

Respectfully submitted,

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<sup>44</sup> Prepared Remarks of the FCC Chairman, Tom Wheeler, Silicon Flatirons, University of Colorado Law School, Boulder, Colorado (February 10, 2014).

<sup>45</sup> *Id.* at unnumbered page 5.

<sup>46</sup> In light of the mention in Chairman Wheeler's speech of *Verizon v. FCC*, No. 11-1355, slip op. issued January 14, 2014 (D.C. Cir.), it is worth noting that the intermediate provider certification program outlined in the FNPRM is not "common carrier regulation" as defined by the Court's opinion.